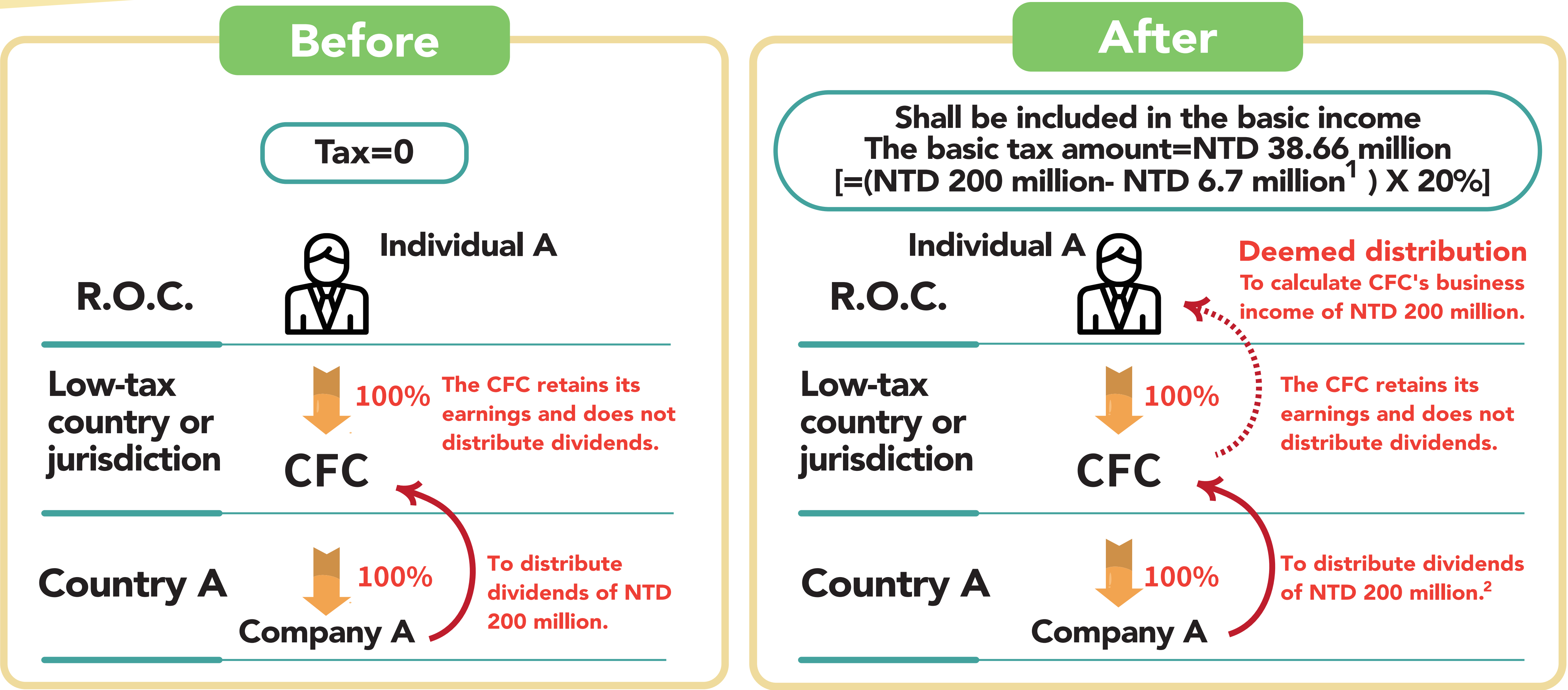
Anti-tax avoidance

Easily grasp the CFC rules for individuals in 5 minutes!

What are the tax effects before and after the implementation of the CFC rules?



Note 1: The amount of basic income exemption is NTD 6.7 million for the year 2023 and NTD 7.5 million for the year 2024.

Note 2: If the invested enterprises in non-low-tax jurisdictions resolve to distribute the surplus earnings of the fiscal year 2022 and prior years before or on March 31, 2024, then the said resolved amount is exempt from the calculation.

Quick overview of the CFC rules

Taxpayers

1. Individuals

A resident within the territory of the R.O.C.

Yes →

No → **Not applicable to the CFC rules**

The applicable scope of the CFC rules

2. Definition of CFC

Foreign enterprises

- Located in a low-tax jurisdiction

And

- Controlled

No → **Not applicable to the CFC rules**

3. A resident individual, along with his/her spouse, and relatives within the second degree of kinship

Directly holding 10% or more of the CFC shares

Yes →

No → **Not applicable to the CFC rules**

4. Exemption threshold

- Carry out substantial operating activities

Or

- The current-year earnings of the CFC do not exceed a given standard

Eligible for exemption → **Exempt from calculating CFC business income.**[1]

Not eligible for exemption →

Calculation of CFC taxable income and tax amount

5. Calculation of CFC business income

To calculate CFC business income based on the individual's direct holding ratio and holding period

→

Avoidance of double taxation

6. Avoidance of double taxation

- When receiving dividends, the amount subject to the CFC rules shall not be included in the basic income again.
- Foreign tax credits may be applicable
- When transferring the CFC's shares and calculating capital gains, the CFC business income calculated previously can be deducted.

↓

The overseas income of a household ≧ NTD 1 million

No → **No need to be taxed**

Yes ↓

Basic income > NTD 6.7 million[2]

No → **No need to be taxed**

Yes ↓

(Basic income – NTD 6.7 million) x 20% = basic tax, and the basic tax > regular income tax

No → **No need to be taxed**

Yes → **Tax on the balance between basic tax and regular income tax**

Note 1: The individual is still required to disclose the CFC information in the prescribed format and attach relevant documents.

Note 2: This amount was adjusted to NTD 7.5 million starting from the fiscal year of 2024.

Definition of CFC

A foreign-affiliated enterprise located in a low-tax jurisdiction

A low-tax jurisdiction meets one of the following conditions:

- **The statutory tax rate of the profit-seeking enterprise income tax in the jurisdiction is not more than 14%.**
- **The country or jurisdiction taxes only on income sourced from it, and foreign-sourced income is not taxed or is taxed only upon actual remittance.**

Applying specific tax rates or tax regimes to the given regions or types of enterprises (i.e., Samoa) is subject to judgment on a case-by-case basis

\+

A individual and their related parties have control over the foreign-affiliated enterprise.

One of the following criteria shall be met:

Equity control

Directly or indirectly holding 50% or more of the shares of the foreign enterprise

Substantial control

Having substantial control over the foreign enterprise

Exemption threshold

Case-by-case inspection

Criterion 1 Substantial operating activities

The CFC has a fixed place of business in its registered place.

\+

The CFC recruits employees to carry out actual operating business in its registered place.

\+

$$\frac{\text{Passive income}}{\text{Gross income}} < 10\%$$

Criterion met → Exempt from income calculation

The CFC whose shares were directly held by an individual and didn't meet criterion 1.

Criterion 2 Minimum Threshold

CFC's current-year earnings

- The sum of all CFCs' earnings* > NTD 7 million
  - Individual CFC's earnings > 0 → Shall calculate the business income
  - Individual CFC's earnings ≦ 0 → Exempt from income Calculation
- The sum of all CFCs' earnings* ≦ NTD 7 million
  - Individual CFC's earnings ≦ NTD 7 million → Exempt from income Calculation
  - Individual CFC's earnings > NTD 7 million → Shall calculate the business income

* The calculation scope includes CFCs whose shares are directly held by an individual, his/her spouse, and dependent relatives filing jointly for individual income tax.

To whom are the CFC rules for individuals applicable, and how to calculate CFC's current-year earnings? (1/2)

Applicable individuals ▶ A resident individual, together with his/her spouse and relatives within the second degree of kinship, directly holds 10% or more of the shares of a CFC on December 31 of the current year.

CFC's current-year earnings =

Basically, the selected method cannot be changed once chosen.

The CFC's net profit (or loss) after tax of the current year and other profit (or loss) items included in the current-year undistributed surplus earnings	±	**Adjustment item 1** Investment income (or loss) derived from invested enterprises in non-low-tax jurisdictions recognized under the equity method	±	**Adjustment item 2** Options Financial instruments measured at fair value through profit or loss (FVPL)

− Unrealized Investment Income + Unrealized Investment Losses (absolute value) + The resolved amount of surplus earnings distribution* − Realized Investment Losses (absolute value) + Adjustment amount for the disposal of shares of invested enterprises

*Note: If the invested enterprises in non-low-tax jurisdictions resolve to distribute the surplus earnings of the fiscal year 2022 and prior years before or on March 31, 2024, then the said resolved amount is exempt from the calculation.

To whom are the CFC rules for individuals applicable, and how to calculate CFC's current-year earnings? (2/2)

Applicable individuals ▶ A resident individual, together with his/her spouse and relatives within the second degree of kinship, directly holds 10% or more of the shares of a CFC on December 31 of the current year.

CFC's current-year earnings =

The CFC's net profit (or loss) after tax of the current year and other profit (or loss) items included in the current-year undistributed surplus earnings

±

Adjustment item 1

Investment income (or loss) derived from invested enterprises in non-low-tax jurisdictions recognized under the equity method

±

Adjustment item 2

Basically, the selected method cannot be changed once chosen.

Options

Financial instruments measured at fair value through profit or loss (FVPL)

− Amount of FVPL's fair value change + Adjustment amount for the disposal of FVPL + Adjustment amount for the reclassification of FVPL

How to individuals calculate CFC business income?

Shall be included in the basic income

CFC business income =

CFC's current-year earnings

– Legal reserve or restricted distribution of earnings

– Losses of past years assessed by tax authority

× **Direct holding ratio** × **Holding period**

Avoidance of double taxation (1/2)

● An individual receives dividends or earnings from his/her CFC:

No double taxation on income

CFC business income has been calculated in accordance with the CFC rules.

Shall not be included in the basic income of the distribution year

Foreign tax credits

income tax paid on dividends or surplus earnings by the CFC

Such paid taxes may be credited against the tax payable of the year in which the business income is included in the basic income, within five years starting from the following day of the expiration of the filing period of the aforesaid year; any overpaid tax is refundable.

Example:

Fiscal Year of 2023

Individual A

100%

CFC

Individual A shall declare CFC business income of NTD 9 million in the 2023 income tax return in May 2024.

Deemed distribution

The net profit on the financial statements is NTD 9 million.

Fiscal Year of 2027

Individual A

100%

CFC

Individual A receives dividends of NTD 9 million.

Shall not be included in the basic income of the year 2027

The amount of the tax paid overseas is NTD 0.9 million.

The deadline for applying for the correction of the 2023 income tax return and tax refund shall be no later than May 31, 2029.

Dividends distributed

In 2027, dividends of NTD 9 million (from the surplus earnings of the fiscal year 2023) were distributed, with withholding tax of NTD 0.9 million.

Avoidance of double taxation (2/2)

When an individual transfers CFC shares

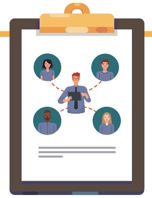
Gain or loss form transaction =

Revenue from the transaction − Original acquisition cost − The balance of the calculated business income of the CFC on the transaction date × Transaction ratio

Declaration forms and the documents to be attached with the filing

Declaration forms

The statement of the shareholding of the individual and his/her related parties



The statement of the CFC income

The documents to be attached with the filing

CFC Financial statements*

Tax payment certificates issued by the tax authorities of the source jurisdictions

Documents of shareholders' consents or minutes of shareholders' meetings of the CFC's invested enterprises

Certification documents of investment loss of the invested enterprises of the CFC

*Note:

1. The financial statements of a CFC shall cover January 1 to December 31 of the current year.
2. The financial statements shall be audited and certified by a Certified Public Accountant from the CFC's jurisdiction, or from the R.O.C., or substituted with other documents validated by the tax authorities.
3. If the individual is unable to provide CFC financial statements to the tax authority before the deadline of the filing period, he/she shall state the reasons and apply for a six-months extension to provide such documents before the filing deadline.

Documents for investigation

Deadline

The documents shall be provided to the tax authority within one month from the next day of the delivery date of a written investigation letter.
If the individual is unable to provide such documents before the prescribed deadline, he/she shall state the reasons and apply for a one-month extension to provide such documents to the tax authority before the said deadline.

Documents to prepare:

01

Details of the changes of the shareholding of the individual and its related parties

02

Financial statements of the invested enterprises in non-low-tax jurisdictions

03

Documents proving that the CFC carried out substantial operating acivities

04

The audited report by a CPA on the holding, measurement, and disposition of financial instruments of the CFC.